LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 22 1970
E. ROBERT SEAVER, CLERK

In The Supreme Court of the United States

OCTOBER TERM, 1970

No. 339

HERMAN R. SLAKMAN,

Petitioner,

versus

STATE OF FLORIDA,

Respondent.

REPLY BRIEF

CHESTER BEDELL
Counsel

ROBERT P. SMITH, JR.
Counsel of record
1520 Barnett Bank Building
Jacksonville, Florida 32202

For petitioner.

BEDELL, BEDELL, DITTMAR,
SMITH & ZEHMER
1520 Barnett Bank Building
Jacksonville, Florida 32202

Of counsel.

In The
Supreme Court of the United States

OCTOBER TERM, 1970

No. 339

HERMAN R. SLAKMAN,

Petitioner,

versus

STATE OF FLORIDA,

Respondent.

REPLY BRIEF

The State asserts in its Response to the Petition for Writ of Certiorari that Mr. Savage, who showed Posey a picture of petitioner because Savage "wanted to know if I could identify him" (Tr. 46), was an investigator for an insurance company and was not "connected with the State for the purpose of preparing the witness for a courtroom identification" (State's Response, p. 2). On that premise the State contends that ". . . whatever Savage may have done on his own as an insurance investigator is not attributable to the State." (State's Response, p. 10.)

Savage was described at Posey's arraignment as "State Fire Marshall" (Tr. 6). In the Bill of Particulars the State gave

Posey's name and address as follows: "Lawrence Posey, c/o Mr. Jack Savage, Deputy Fire Marshal, St. Petersburg, Florida." (Tr. 5.) At the proceeding at which Posey was adjudged guilty, Savage brought Posey to Court (Tr. 100) and asked the Court to let Posey go on his own recognizance (Tr. 44). Savage brought Posey to the trial at which petitioner was convicted (Tr. 45).

Whether Savage was, in fact, the "State Fire Marshal" or a "Deputy Fire Marshal" is not material or decisive. The controlling fact is that the State accepted Savage's services in preparing Posey for his in-court identification of petitioner.

So it is immaterial, if true, that the prosecutor had no "knowledge of this photographic identification" (State's Response, p. 10). The prosecutor became aware of it when he elicited Posey's testimony on *redirect* and relied on it in obtaining petitioner's conviction.

The State, having committed Posey to Savage's care and having availed itself of Savage's preparation of Posey for the in-court identification, is in no position to now claim that Savage was not "connected with the State for the purpose of preparing the witness for a courtroom identification" (State's Response, p. 2).

The procedure employed by Savage in advance of the trial, adopted by the prosecutor at the trial and approved by the trial court and two Florida appellate courts, has effectively denied petitioner his right to due process of law guaranteed him by the Fourteenth Amendment.

Respectfully submitted,

CHESTER BEDELL
Counsel

ROBERT P. SMITH, JR.
Counsel of record
1520 Barnett Bank Building
Jacksonville, Florida 32202

For petitioner.

October 19, 1970

BEDELL, BEDELL, DITTMAR,
SMITH & ZEHMER
1520 Barnett Bank Building
Jacksonville, Florida 32202

Of counsel.